

BINDING CLASS RULING: BCR 043

DATE: 20 February 2014

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECTION : SECTION 1(1), DEFINITION OF “GROSS INCOME”
**SUBJECT : ANTECEDENT CESSION OF RIGHTS TO FUTURE PRODUCTION
REBATE CREDIT CERTIFICATES**

1. Summary

This ruling deals with the antecedent cession of rights to future Production Rebate Credit Certificates (PRCCs) issued in terms of the Automotive Production and Development Programme (APDP).

2. Relevant tax laws

This is a binding class ruling issued in accordance with section 78(2) and published in accordance with section 87(2) of the Tax Administration Act No. 28 of 2011.

In this ruling references to sections are to sections of the Act applicable as at 8 October 2013 and unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in the Act.

This is a ruling on the interpretation and application of the definition of “gross income” in section 1(1).

3. Class

The class members to whom this ruling applies are described in point 4 below.

4. Parties to the proposed transaction

Cessionary: An Original Equipment Manufacturer (OEM) that qualifies as a recipient in terms of certain requirements

Class Members (cedents): Component Manufacturers in the automotive industry as identified in the ruling application

5. Description of the proposed transaction

5.1 The Automotive Production Development Programme

The Customs and Excise Act No. 91 of 1964, in item 317.03 of Schedule 3 thereto, creates the legislative framework for the APDP. Amongst others, the APDP includes a Production Incentive (PI), which is administrated through the use of PRCCs issued by the International Trade Administration Commission of South Africa. The PI is basically a percentage of the difference in value between the

selling price of, and material used (value-added) in, an eligible product, and is indicated on the PRCC.¹

A PRCC will be issued for the qualifying amount, in terms of the PI, applicable to the eligible product. The value of the PRCC is used to reduce the customs duty value of specified automotive products to be imported into the South African Customs Union. It thus follows that the actual monetary benefit to be derived by the holder of the PRCC depends on the percentage duties payable on the particular imported products to which the PRCC is applied.

The regulatory system allows² for a Component Manufacturer to cede the right to obtain a PRCC, prior to its initial issue. In terms of such an arrangement, the OEM is the original holder of a freshly issued PRCC, for which another entity (e.g. the component manufacturer) successfully qualified and applied.

5.2 Proposed transaction

The Class Members propose to cede to an OEM their rights to future PRCCs that they may qualify for as a result of the supply of components to such OEMs, each under a separate transaction (antecedent cession). The antecedent cession may form part of the upfront negotiation process relating to the supply of components that takes place between a Class Member and an OEM. The following methods of providing consideration for the rights to future PRCCs are contemplated –

- a pre-determined amount of, say, 10% of the face value of the PRCC to be payable by the OEM for the transfer to it of the right to a future PRCC. (In this regard it should be noted that the amount determined may not necessarily be the open market value which could be fetched for the PRCC, but rather an agreed nominal amount. In most cases, the pre-determined amount agreed to is intended to only cover the administrative costs associated with the PRCC.); or
- reimbursement of the component manufacturer in relation to the costs³ payable by the component manufacturer to apply for the PRCC; or
- a combination of the above; or
- none of the above, but the component manufacturer acknowledges that, given the mere fact that it has been awarded the tender and hence its improved business capacity, it is prepared to cede the PRCCs.

6. Conditions and assumptions

This ruling is subject to the following additional conditions and assumptions being true and accurate:

- The Class Members manufacture eligible products and, therefore, fully qualify to apply for the PRCCs in question.
- The Class Members will submit draft agreements to the Advance Tax Rulings Unit in relation to every future antecedent cession for confirmation that each such transaction falls within the ambit of this ruling.

¹ ITAC APDP Regulations, section 6.

² ITAC APDP Info Doc A/2013 in clause 6.4.

³ Such as audit costs, freight and logistical costs or finance charges calculated for the period that the goods are in transit.

7. Ruling

The ruling made in connection with the proposed transaction, in the context of the specific background facts, is as follows:

- Only such amounts, as are agreed between the parties to an antecedent cession to constitute monetary consideration, would constitute “gross income” for purposes of income tax, as defined in section 1(1).

8. Period for which this ruling is valid

This binding class ruling is valid from the date of issue thereof until the APDP is terminated.

Issued by:

**Legal and Policy Division: Advance Tax Rulings
SOUTH AFRICAN REVENUE SERVICE**